

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

EDWARD ROCK, JR.,

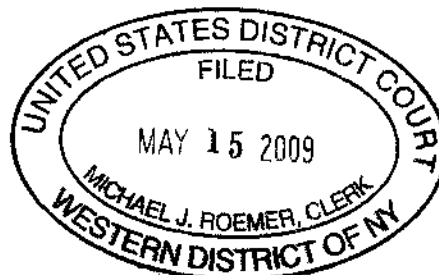
Plaintiff,

-v-

DR. C. MISA, RHSA, G.J. KADIEN, FHSD, RMD,
DIRECTOR CORC, F. ALLAN and UTILIZATION
COMMITTEE,

Defendants.

DECISION AND ORDER
09-CV-0088



Plaintiff, Edward Rock, while still an inmate, filed the instant action *pro se* on or about January 27, 2009. The Court granted Plaintiff permission to proceed *in forma pauperis* and directed the Clerk of the Court to cause the United States Marshals Service to serve the summons and complaint on the named Defendants. (Docket No. 4). Thereafter, the Clerk's Office sent Plaintiff a notice, along with the necessary number of blank summonses and Marshal Process Receipt and Return Forms ("Marshal Forms"), advising him to complete the summonses and Marshal Forms, then return them to the Clerk's Office so the Marshals Service could effect service.

Plaintiff returned a number of completed summonses and Marshal Forms for the following named Defendants: Dr. C. Misa, Facilities Health Services Director ("FHSD")/Wend HUB RMD; the Regional Health Services Administrator ("RHSA"), Wende Hub; G. J. Kadien, Superintendent, Gowanda Correctional Facility; the Regional Medical Director ("RMD"), Hub 8 ("precedent to Dr. Misa"); Director, CORC; F. Allen, Nurse Administrator, Gowada Correctional Facility; and Dr. Bangsil, Gowanda Facility Health

Services Director, Gowanda Correctional Facility. Plaintiff has also submitted what he titled a "Statement of Claim," which he states in an enclosure letter is a reformatted (page and line numbering added) Statement of Claim to ease reference in future proceedings (Content is Identical to that submitted in initial filing), and an Interrogatory/Demand for Bill of Particulars,¹ which he asks to be served on Dr. Misa. But Plaintiff has not submitted summonses or Marshal Forms for the Facility Health Service Director, who succeeded Dr. Misa, and members of the Utilization Committee.

As an initial matter, this Court directs the Clerk of the Court to docket both the Statement of Claim and Interrogatory/Demand for Bill of Particulars. These documents do not have to be served on the Defendants along with the summons and complaint because (1) the Statement of Claim is claimed by plaintiff to be identical in content to that which was attached to the complaint (Docket No. 1), and (2) discovery cannot commence until after Dr. Misa has been served and issue has joined. After Dr. Misa appears through counsel, plaintiff may serve, by mail, a copy of this Interrogatory on counsel.² See Fed.R.Civ.P. 5(b)(1)-(2).

¹There is no Bill of Particulars in federal civil practice.

²The first interrogatory asks defendants to identify the names and addresses of the unnamed defendants identified in the complaint as the Regional Health Services Administrator ("RHSA"); Director, CORC; the Regional Medical Director, Hub 8; the Facility Health Services Director ("FHSD"), Wende Hub; and "Utilization Committee." While this is a proper mechanism to attempt to identify these defendants, the Court, rather than waiting for issue to be joined and having the defendants provide responses to the interrogatory, will, as addressed below, request the New York State Attorney General's Office to ascertain the names and addresses of these defendants.

Identifying Unnamed Defendants

Plaintiff does not know the names of Defendants the Regional Health Services Administrator (RHSA), Wende Hub; the Facility Health Services Director (FHSD), Wende Hub, who succeeded Dr. Misa; the Regional Medical Director (RMD), Hub 8 (Dr. Misa's predecessor); the Director of CORC; and the names of members of the Utilization Committee. See Complaint, Section 4A ("Defendant's Information"); n.1, *infra*. In fact, Plaintiff's complaint names a number of the defendants only by their title. As a result, the United States Marshals Service will not be able to serve these intended defendants without further information.

But as the Second Circuit held in Valentin v. Dinkins, 121 F.3d 72 (2d. Cir. 1997)(per curiam), *pro se* litigants are entitled to assistance from the district court in identifying a defendant whom the *pro se* litigant is unable to identify. Therefore, this Court requests the Attorney General of the State of New York to attempt to ascertain from DOCS, the full names of the officials and employees identified in the complaint by their titles and dates they may have been involved in the alleged inadequate medical care and treatment. The Attorney General is also requested to provide the address where each defendant can be served. The Attorney General need not undertake to defend or indemnify these individuals at this juncture. This order merely provides a means by which Plaintiff may name and properly serve the Defendants as instructed by the Second Circuit in *Valentin*. Once this information is provided, Plaintiff shall be directed to amend his complaint to reflect the full names of the Defendants. Once the complaint has been amended, summonses shall be issued and the Court shall direct service on the Defendants so identified.

IT IS HEREBY ORDERED that the Clerk of the Court is directed to forward a copy of the complaint (Docket No. 1) and this Order to the Assistant Attorney General in Charge, Buffalo Regional Office, Main Place Tower, Suite 300A, 350 Main Street, Buffalo, New York 14202, and the Attorney General's Office is hereby requested to provide to the Court's Buffalo Pro Se Office **by June 9, 2009**, the information specified above regarding the identities and addresses, for purposes of service, of the Regional Health Services Administrator (RHSA), Wende Hub; the Facility Health Services Director (FHSD), Wende Hub, who succeeded Dr. Misa; the Regional Medical Director (RMD), Hub 8 (Dr. Misa's predecessor); the Director of CORC; and members of the Utilization Committee; and

FURTHER, that the Clerk of the Court is directed to docket the documents titled "Statement of Claim" and "Interrogatory/Demand for Bill of Particulars."

SO ORDERED.

Dated: May 15, 2009
Buffalo, New York



WILLIAM M. SKRETNY
United States District Judge